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C O N F I D E N T I A L SECTION 01 OF 04 GENEVA 000311

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SUBJECT: UNIVERSAL PERIODIC REVIEW: FUTURE UNCERTAIN, BUT INAUGURAL SESSION SHOWS THE NEW MECHANISM'S POTENTIAL

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[¶](#)B. B) APRIL 7 REES-KLECHESKI EMAIL

Classified By: Ambassador Warren W. Tichenor. Reasons: 1.4 (B/D).

[¶](#)1. (C) SUMMARY: The UN Human Rights Council kicked off its Universal Periodic Review (UPR) with an April 7-18 session that examined the human rights behavior of an initial tranche of sixteen countries. It is too early to fully assess UPR's value, but the initial session revealed some of the mechanism's strengths and weaknesses. It showed that UPR can offer a good forum to pose tough questions about the State under Review (SuR), with webcasting of the proceedings as an added advantage. At the same time, many countries chose not to raise significant concerns, and the interactive dialogue did not prove an effective forum for meaningful discussion of issues. The session also showed that NGOs can use UPR to some advantage but are significantly constrained in their ability to do so. While the inaugural session began with much enthusiasm, interest soon declined, which could bode ill for UPR's future. The session featured skirmishing over the outcome document for each review, an important issue that will be taken up in the June Council session. Much remains to be determined about UPR's usefulness, but the first session highlighted that UPR has some significant potential as an instrument for promoting human rights. END SUMMARY.

UPR GETS UNDERWAY

[¶](#)2. (U) Despite controversy that had threatened to delay a scheduled April 7 start-up (ref a and previous), the Human Rights Council held its inaugural two-week UPR session, conducting reviews of a first tranche of sixteen countries (Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, United Kingdom, India, Brazil, Philippines, Algeria, Poland, Netherlands, South Africa, Czech Republic, Argentina). Each three-hour review included up to one hour of speaking time for the State under Review (SuR), and interventions by both Council members and observer states. For each SuR, the Council met again two days later for up to half an hour to consider a report on the review, as prepared by the Office of the High Commissioner for Human Rights (OHCHR), the SuR itself and the three members of a "troika" that had been randomly selected to assist in each review. The initial review was done in a working group format, with the results, including formal consideration of each report, to be carried out in a one-hour plenary to be held as part of the June Council session. The June session will also consider the reports on a second tranche of reviews, to be held on May 5-15, of another 16 countries (Gabon, Ghana, Peru, Guatemala, Benin, RoK, Switzerland, Pakistan, Zambia, Japan, Ukraine, Sri Lanka, France, Tonga, Romania and Mali).

[¶](#)3. (SBU) Except for South Africa, whose delegation was headed

by its Geneva-based ambassador, all the other SuR delegations were led by officials from capital. Several delegations were headed at the ministerial level -- Algeria sent its foreign minister and Ecuador sent its justice minister, for instance -- and generally included officials from various agencies.

¶4. (SBU) The ground rules of the UPR mechanism call for a "constructive" approach rather than "naming and shaming," and almost all interventions were made in that spirit. Even when Cuba's ambassador strayed from his prepared statement during the UK session to say that he fundamentally disagreed with the UK's approach to the war on terror, he eschewed the angry tone that Cuba often uses in Council sessions. The UK's head of delegation parried Cuba's comment ably, using the kind of argument -- an acknowledgment of continued challenges coupled with a commitment to keep addressing them in ways consistent with human rights commitments -- that made the UK review among the most constructive of the session.

SOME TOUGH QUESTIONING, MANY SOFTBALLS

¶5. (SBU) Despite the "constructive" tone of interventions, the reviews did feature a number of tough questions and expressions of concern to SuRs. Questions posed by the U.S. (based on ref b guidance), focusing on specific issues of concern, were among the most pointed, and on several occasions, NGOs approached us after the reviews to express appreciation for our approach. In the Algeria review, several countries' interventions centered on equality of women; Tunisia's review included questions on torture and press freedom. Predictably, several countries asked the UK, Poland and the Czech Republic about rendition flights and detention policies. In the view of many NGO activists, those

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occasions where questions focused squarely on issues of concern, even if not posed in a confrontational manner, demonstrated that UPR can be used effectively to pressure governments on human rights issues.

¶6. (SBU) Nonetheless, NGOs complained that the majority of interventions avoided tough issues, focusing instead on more marginal human rights concerns or "serving up softballs" for the SuR. UPR Secretariat staff also privately expressed to us their concern about filibustering: during the reviews of African countries, for instance, virtually all members of the African Group signed up to speak, dominating the speakers list and limiting the opportunity for others to intervene. In most cases, the African interventions spent far more time praising their fellow African SuRs' human rights behavior than highlighting problems. And when faced with a difficult question, a number of SuRs either categorically denied the existence of a problem, claimed it had been resolved through new legislation, or simply avoided responding.

¶7. (SBU) The fact that the forum was webcast was a positive aspect of UPR. On those occasions where tough questions or concerns were raised, webcasting improved the prospects that this would be publicized, with NGOs in particular saying that they could use webcast clips to press their causes. Days before the start of the session, some OIC countries were still seeking to avoid having the reviews webcast, arguing that doing so would depart from the standard practice of not webcasting working group meetings. That position was defeated, and in future, the UPR working group sessions, as well as the subsequent plenaries to finalize consideration of the initial reviews, will be webcast.

¶8. (C) Some SuRs made new human rights commitments in the run-up to their review or unveiled them during the review. Most noteworthy, perhaps, was Tunisia's announcement that it was inviting all special rapporteurs to visit the country. A high-ranking OHCHR staffer told us April 25 that he saw this as a valuable step, precipitated by the UPR review, and that he was following up promptly with the Tunisians in order to

arrange for visits for several special rapporteurs previously not invited into the country. Tunisia also noted in its review that it had allowed Human Rights Watch into the country, and Zimbabwe praised that step in its intervention. That NGO would publicize this in hopes of pressuring Zimbabwe into letting its activists visit as well, recognizing that this was unlikely but nonetheless seeing it as a way to embarrass Harare.

NGO ENGAGEMENT GOOD ALBEIT LIMITED

¶9. (SBU) Among the more noteworthy aspects of the first round of reviews was the role of independent NGOs. Such groups -- including both the major Geneva-based ones and indigenous groups that had traveled to Geneva for the occasion -- were out in force. Though not permitted to make interventions during this phase of the reviews, they worked hard on the margins to press their causes, highlighting the shortcomings of the SuR and urging countries to pose questions or raise concerns about them. In an April 24 meeting, representatives of a number of Geneva-based NGOs told us they and their indigenous partners were making plans to use the proceedings, including the webcasts, to pressure SuRs. A Brazilian NGO, for instance, was transcribing the webcast of Brazil's review and would send it around broadly within civil society, highlighting the concerns and suggestions that had been raised during interventions.

¶10. (SBU) The activists also worked on the margins of the session to publicize their independent assessments of the extent to which each SuR had worked with NGOs in the run-up to its review. SuRs were expected to engage with civil society in preparing for their review, and virtually all claimed, in their introductory remarks, that they had vigorously done so. In their conversations on the margins of the session, as well as during the side events that several NGOs organized, the activists presented what amounted to a mixed assessment of each SuR's claim. Philippine activists, for instance, generally gave the Philippine government decent marks for engaging with NGOs in preparing for the review, although they expressed frustration that many of their recommendations had been disregarded in the Philippine national report. Among a group of Tunisian activists, by contrast, those registered by the government said they had been consulted, at least nominally, while those that had been refused registration said they had been shut out of consultations and highlighted the unfairness of the NGO registration procedure. Several NGOs at the April 24 session

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noted that several SuRs in the first tranche had signed up to treaty commitments or made other human rights pledges in the run up to the session in order to trumpet it in their presentations. This demonstrated another of the positive aspects of the UPR mechanism, the activists said.

¶11. (SBU) NGOs will be allowed to make interventions during the plenary concerning each SuR. Nonetheless, each plenary is to last only an hour, and with the SuR and other countries also able to intervene, NGOs will have minimal time to do so.

NGOs expressed bitterness about this, while also planning how they could most effectively have their voices heard during the plenary. Meanwhile, countries of the OIC and their allies were seeking to further constrain NGO influence during the plenary. They made an effort, which the EU and others eventually beat back, to allow only ECOSOC-accredited NGOs to speak, which would have shut out some indigenous organizations. They also insisted that interventions during the plenary should not affect the contents of the report on each review, thus seeking to minimize the significance of NGO interventions.

CROSS-REGIONAL AND MICRO-STATE ENGAGEMENT

¶12. (SBU) In their assessments of the first tranche of reviews, some observers have pointed to a few other modest but unexpected benefits of UPR. In the run-up to the first session, Morocco and Switzerland had organized seminars for less developed francophone and anglophone states, respectively, on how to prepare for UPR. Both had been judged successes in encouraging participating states to take the process seriously and in fostering cross-regional links on human rights issues. With Tonga in the second tranche of SuRs, Australia and New Zealand organized a meeting to discuss how to help micro-states prepare for UPR and benefit most from it, and it is believed that UPR could be a spur for such states to become more engaged on human rights issues.

UPR FATIGUE?

¶13. (SBU) The inaugural UPR session started with great enthusiasm. Over 70 states signed up to intervene for the first day's reviews (of Bahrain and Ecuador), and many of those interventions stressed the historic nature of UPR and their high expectations for it. By the start of the second week, however, attendance had declined (except among NGOs), as had the number of interventions. Particularly with the intense UPR schedule of three two-week sessions per year, interspersed among a busy schedule of Human Rights Council and other meetings, the UPR Secretariat and others began privately to express concerns that interest and engagement in UPR would taper off so significantly as to weaken the mechanism's overall effectiveness.

CONTROVERSY OVER OUTCOME DOCUMENT

¶14. (SBU) Questions about the outcome document, which had long gone unresolved, finally came to a head as the Council began to consider the reports of the initial reviews. While some countries hoped the reports would provide a solid basis to monitor an SuR's implementation of recommendations laid out in the review, the OIC and others sought to counter this, with an eye to circumscribing the significance of the recommendations. With the prospect that the UPR session would be derailed as a result of the controversy, compromise language was hammered out for inclusion in each report. According to that language, recommendations and conclusions made in each report reflect the position of the state suggesting them, and "should not be construed as endorsed by the working group as a whole." Nonetheless, other formulations vary in the reports from the session, and some countries seek to standardize all the language on recommendations. This will be addressed when the UPR reports are considered during the June Council plenary, and could again produce sharp controversy.

COMMENT

¶15. (C) Among the biggest negatives of UPR is that many states are using it as a rationale to do away with country-specific resolutions and special sessions. As we have noted previously, among the arguments that Sri Lanka has used to forestall Council action on its human rights record is the fact that it will undergo UPR review in May. Such an argument can be countered successfully, although it has

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gained resonance and may well continue to do so whether or not UPR proves an effective tool in its own right. At the same time, there is at least some possibility that a country's disregard for important recommendations made during UPR could become the basis for a country-specific resolution.

¶16. (C) Based on the initial session, it is far too early to fully assess the effectiveness of UPR. On the one hand, it is unclear whether, in the aftermath of the initial session, more countries will pose tough questions and raise serious

concerns, possibly leading to a more useful interactive dialogue. On the other hand, important procedural decisions, including the handling of the outcome document, remain to be made. It remains to be seen whether and how both the SuRs and independent NGOs use the reviews to advantage: will SuRs with flawed human rights records use UPR to help whitewash their behavior, and will NGOs use it to pressure those governments. It also remains to be seen whether some states will use UPR recommendations as a political foil to pursue sometimes difficult improvements in their human rights record.

¶17. (C) It is clear, however, from the initial session that countries can use UPR to raise tough questions and recommendations. The fact that these will be reflected in the report of the SuR's session and that they will be webcast are significant added benefits. Furthermore, the initial session showed that independent NGOs can use both the preparatory stages of a country's review and the review itself to promote their views. Indeed, the UPR process holds the potential to bolster the role and legitimacy of indigenous human rights NGOs, many of which we have worked long and hard to promote. These advantages, in addition to less significant ones such as development of new cross-regional linkages on human rights issues, suggest that UPR is worth pursuing even as we keep a close eye on how it evolves and support efforts to make it as effective as possible.

TICHENOR